

**AMERICAN ARBITRATION ASSOCIATION
230 SOUTH BROAD STREET, 12TH FLOOR
PHILADELPHIA, PA 19102-4106**

Case Nos. 0000-9176-Transfer and 0000-5532- Restitution

In the Matter of Arbitration Between

CITY OF PHILADELPHIA

Employer

and

**FRATERNAL ORDER OF
POLICE, LODGE NO. 5**

Union

**OPINION
AND
AWARD**

ARBITRATOR:

Robert E. Light, mutually chosen
by the parties pursuant to the
rules and regulations of the
American Arbitration Association

HEARING:

May 28, 2015 in Philadelphia, PA.

APPEARANCES:

For the City
Margaret J. Theranger, Esq. – Asst. City Solicitor
Gregory Malkowski, Captain
Commissioner Charles H. Ramsey

For the FOP

Marc Gelman, Esq. (Jennings Sigmond, PC)
John McGrody, Union Vice President
Sergeant Thomas Walsh, Grievant

ISSUES:

What shall be the disposition of AAA Case Nos.
9176 and 5532?

BACKGROUND

A hearing in these matters was held at the offices of the American Arbitration Association in Philadelphia, Pennsylvania on May 28, 2015, with both sides present and duly represented by counsel and where both parties were afforded full and complete opportunity to offer evidence and argument in support of their respective contentions. In lieu of filing post-hearing briefs, both counsel decided to make oral summations, after which time the hearing was declared closed.

The City of Philadelphia (hereinafter the “City” or the “Employer”) and Fraternal Order of Police, Lodge No. 5 (hereinafter the “Union” or “FOP”) are signatories to a current collective bargaining agreement and have been in a contractual relationship for many years. In accordance therewith, a grievance was filed by the FOP on behalf of Sergeant Thomas Walsh in response to an official reprimand and restitution received by Sergeant Walsh by letter dated June 4, 2014. (City Exhibit No. 1). That document reads as follows:

This is to notify you that you are hereby OFFICIALLY
REPRIMANDED AND RESTITUTION IS TO BE MADE for
NEGLECT OF DUTY, Section 5-§001-10: (Unspecified.)

Internal Affairs investigation #13-1519 determined that you failed to report on and off your assignment as prescribed. Based on surveillance conducted on twenty-six (26) days from May 20, 2013 to August 15, 2013, you were observed either arriving late or leaving early from work on two (2) occasions. You violated the Home Rule Charter 10-108, Philadelphia Civil Service Regulation 21.06 and the Philadelphia Police Department Directives. As a result of this misconduct, you defrauded the City of Philadelphia of three (3) hours of straight time, valued at \$114.18.

In addition to receiving an Official Reprimand for the above violations, you were transferred from your assignment in East Detectives Division to the 25th District.

The matter proceeded through the steps of the grievance procedure and when there was no resolution it was submitted for final and binding resolution by the Union to the American Arbitration Association, from whose panel of arbitrators the undersigned was duly chosen.

FACTS

Sergeant Thomas Walsh, the grievant herein, is a long time employee of the City. It was stipulated at the hearing that he was surveilled by Internal Affairs on twenty-six occasions over a period of some time. That surveillance indicated that he left work early twice – on June 25, 2013 while on the 8:00 a.m. – 4:00 p.m. shift, he left work one-half hour early; on July 23, 2013 on the 8:00 a.m. – 4:00 p.m. shift he left work two and one-half hours early. In both instances Sergeant Walsh was paid for having worked a full shift. It was stipulated that the investigation by Internal Affairs was initiated by an anonymous letter. Further, it was stipulated that there were three other employees (two Sergeants and one Lieutenant) who also received discipline for leaving early and who also were, as was Sergeant Walsh, transferred from their positions.

At the hearing, Sergeant Walsh testified in his own behalf. It was his testimony that this was the first discipline that he had received in his many years of service with the City and, in reality, he did not deny the facts respecting his leaving work early on the two occasions indicated. In addition to being transferred from East Detectives, the grievant lost \$114.18 which was deducted from his pay for the time not worked.

At the hearing, Commissioner Charles H. Ramsey testified regarding this matter. In fact, he is the final decision maker in these kinds of matters. It was his testimony that he took what was characterized as the Commissioner's Direct Action, that is, he can impose discipline directly without going through the Disciplinary Board. As regards the transfer, Commissioner Ramsey stated that the transfer from East Detectives Division to the 25th District was proper. (He noted

that they were both in the same building). He stated that the grievant received a reprimand which was the lowest form of discipline and that the money deducted from the grievant's pay was restitution since he did not work the times that were indicated. It was his testimony that the range of discipline that could have been imposed was from a reprimand to dismissal with reprimand being the lowest form of discipline. He characterized what the grievant did here as "slide time" and that simply put the grievant got caught.

POSITION OF THE UNION

The Union takes the position that we are dealing here with an employee with some twenty-six years of service in the City who, apart from the instant matters, had a very good record. It maintains that in effect what occurred here was a *de facto* demotion as well as loss of some money. It requested that the arbitrator reinstate Sergeant Walsh to his prior position in the East Detectives Division and that he also receive the \$114.18 which was taken from his pay, which, in its view, would make the grievant whole. It asks that the grievance be sustained.

POSITION OF THE CITY

The City, on the other hand, takes the position that what is involved here is theft of time and that the grievant was paid for work he did not perform. In addition, it argues that the transfer from East Detectives as was the reprimand issued to the grievant were proper forms of discipline as determined by the City. It maintains that this long service employee "should have known better" and that the City's actions here were proper so that the grievance should be denied.

DISCUSSION

The arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth at the hearing, the contract and the exhibits prior to reaching his decision. Initially, the arbitrator notes that we are dealing here with a long service employee who, aside from the instant matters, has had an excellent work record in the City of Philadelphia. Having said that however, it is apparent to this arbitrator and he so finds that his actions in leaving work early without proper authorization was inappropriate and misguided. It is therefore understandable to me that this responsible Police Commissioner took swift and appropriate action in imposing discipline, taking into consideration the grievant's prior good record. As the Commissioner testified, what the grievant did here would have a "negative effect on the entire organization, including losing the respect of his subordinates."

What remains for determination is the appropriateness of the decision to transfer the grievant. While some arbitrators may differ, it is the norm in these matters and as has been found by many arbitrators, a transfer is not deemed appropriate as a means of discipline. This arbitrator agrees with that view. Therefore, while the reprimand for the infraction was proper, in the view of this arbitrator the transfer was not, so that as the remedy the arbitrator rules that the grievant shall be returned to the Detective Division.

Therefore, the undersigned having duly heard all of the proofs and allegations of the parties to this proceeding makes the following award:

AWARD

Sergeant Thomas Walsh was properly reprimanded by the City for what is characterized as "theft of time". In addition, the City properly deducted the amount of \$114.18 from his pay. Further, the arbitrator finds that the transfer of Sergeant Walsh from East Detectives to the 25th District was inappropriate. Sergeant Walsh shall be transferred to the Detective Bureau (not necessarily East Detectives).



ROBERT E. LIGHT, ARBITRATOR

AFFIRMATION

I, Robert E. Light, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.

Dated: June 15, 2015



Robert E. Light, Arbitrator